APPENDIX I.

OPINION

Supreme Court of Illinois

UNITED STATES OF AMERICA

State of Illinois } ss.
Supreme Court }

At a Term of the Supreme Court, *begun and held in Springfield, on Monday, the* tenth *day of* January *in the year of our Lord, one thousand nine hundred and* fifty five *within and for the State of Illinois.*

Present: George W. Bristow, Chief Justice

Justice Walter V. Schaefer
Justice Joseph E. Daily
Justice Ralph L. Maxwell
Justice Harry B. Hershey
Justice Ray I. Klingbiel

Latham Castle, Attorney General
Harry G. Newman, Marshal

Attest: Earle Benjamin Searcy, Clerk

Be It Remembered, *that afterwards, to-wit, on the* 21st *day of* January, 1955 *the opinion of the Court was filed in said cause and entered of record in the words and figures following, to-wit:*

People State of Illinois,
Defendant in Error,
No. 33304 v.
Louis Cosper,
Plaintiff in Error.

Error to the
Appellate Court
First District.

EARLE BENJAMIN SEARCY

CLERK OF SUPREME COURT
STATE OF ILLINOIS

Docket No. 33304—Agenda 4—November, 1954.

The People of the State of Illinois, Defendant in Error, v. Louie Cosper, Plaintiff in Error.

Mr. Justice Hershey delivered the opinion of the court:

This is a writ of error to review the decision of the Appellate Court, First District, which affirmed the conviction of the defendant, Louie Cosper, in the municipal court of Chicago. (*People* v. *Cosper,* 2 Ill. App. 2d 168.) The defendant was found guilty by a jury of contributing to the delinquency of a minor, and his punishment was fixed at imprisonment in the house of correction for a term of ninety days.

The facts of the case are stated in the Appellate Court opinion, and we adopt that opinion on the questions relating to the validity of the information, the sufficiency of

the evidence and the correctness of the Court's instructions to the jury.

We wish, however, to add an additional comment with regard to other allegations of error urged by the defendant. Among the assignments of error so urged was that the defendant was denied substantial constitutional rights. It is asserted in this connection that the Appellate Court wrongfully denied his motion to transfer the cause to this court in accordance with Rule 47. (Ill. Rev. Stat. 1953, chap. 110, par. 259.47.) When cases are taken to the Appellate Court wherein errors are assigned of which that court has jurisdiction, the party so suing out the writ of error is deemed to have waived all constitutional questions involved. (*People* v. *Richardson,* 397 Ill. 84; *People* v. *Raymond,* 393 Ill. 147; *People* v. *Billow,* 377 Ill. 236; *People* v. *McDonnell,* 377, Ill. 568; *People* v. *Rosenthal,* 370 Ill. 244; *People* v. *Terrill,* 362 Ill. 61.) Moreover, since the defendant did not raise any constitutional questions in his motions for a new trial and in arrest of judgment, he has waived his right to be heard on them in this review. *People* v. *Cosper,* 405 Ill. 543; *People* v. *Reck,* 392 Ill. 311; *People* v. *Jankowski,* 391 Ill. 298.

Finally, the defendant assigns as error the fact that the jury not only determined guilt but also fixed the penalty. This contention is without merit. Section 6a (b), division XIV, of the Criminal Code (Ill. Rev. Stat. 1953, chap. 38, par 754a(b),) provides, *inter alia*: "In all cases where the penalty as prescribed by statute is confinement in the county jail, or fine, or both, if the jury finds the accused guilty, it shall also fix the time of confinement, or fine, or both, as the case in its judgment requires." The defendant was convicted under section 2 of the act to punish contributing to delinquency of children, (Ill. Rev. Stat. 1953, chap. 38,

par. 104,) which provides a penalty of sentence to the county jail, house of correction or workhouse, or fine, or both. Therefore, section 6a(b) quoted above is applicable, and the jury correctly fixed the penalty. See *People* v. *Moore,* 324 Ill. App. 109.

The judgment of the Appellate Court, First District, is therefore affirmed.

Judgment affirmed

Messrs. Herbert M. Wetzel
&
Arthur Frankel,
105 W. Madison St.,
Chicago, Illinois.

Bloomington, Ill., Feb. 5, 1955

I have this day received

NOTICE OF INTENTION TO APPLY FOR REHEARING

in No. 33304 entitled

People,

v.

Cosper.

Edwin H. Cooke,
EDWIN H. COOKE *GEH.*
Reporter of Decisions.

SUPREME COURT
STATE OF ILLINOIS

JUSTICES

William J. Fulton — Joseph E. Daily
Walter V. Schaefer — George W. Bristow
Ralph L. Maxwell — Harry B. Hershey

Ray L. Klingbiel

OFFICE OF
EARLE BENJAMIN SEARCY
CLERK OF THE SUPREME COURT
SPRINGFIELD

February 4, 1955

Mr. Herbert M. Wetzel
Attorney at Law
105 W. Madison Street
Chicago 2, Illinois

Dear Sir:

Your Notice of Filing Petition for Rehearing,

in re: People State of Illinois,
defendant in error,
vs.
Louie Cosper,
plaintiff in error,

received and filed February 4, 1955,
under General Number 33304.

Very truly yours,
Earle Benjamin Searcy
Clerk of the Supreme Court

APPENDIX II.

Appellate Court of Illinois

AT A TERM OF THE APPELLATE COURT, Begun and held at Chicago, on Tuesday, the Fifth day of June in the year of our Lord One Thousand Nine Hundred and Fifty-One within and for the First District of the State of Illinois.

Present, Hon. Joseph Burke, Presiding Justice.
Present, Hon. Roger J. Kiley, Justice.
Present, Hon. John C. Lewe, Justice.
James M. Whalen, Clerk. John E. Babb, Sheriff.

And afterwards on the 29th day of June A.D. 1951, it being one of the days of the said June Term A.D. 1951 of said Court, there were present:

The Honorable Roger J. Kiley, Presiding Justice
The Honorable John C. Lewe, Justice
The Honorable Michael Feinberg, Justice.
James M. Whalen, Clerk. John E. Babb, Sheriff.

Whereupon the following proceedings were had and entered of record in said cause, to-wit:

BE IT REMEMBERED, That on the 29th day of June A.D. 1951, there was filed in the office of the Clerk of said Court, an opinion of said Court, in words and figures following, to wit:

The People of the State of Illinois,
Defendant in Error,
No. 45222 vs.
Louis Cosper,
Plaintiff in Error.
Error to
Municipal Court
of Chicago

ON REHEARING.

MR. JUSTICE LEWE DELIVERED THE OPINION OF THE COURT.

In this case a rehearing was granted on the petition of plaintiff in error.

Plaintiff in error, Louie Cosper, hereinafter called defendant, was charged with contributing to the delinquency of female children in two separate informations. In a trial before the court without a jury he was found guilty in each case and sentenced to serve one year in the House of Correction, with sentences to run concurrently. Defendant appealed to the Supreme Court, where the cause was transferred to this court on the ground that no constitutional question was presented. (*The People* v. *Cosper*, 405 Ill. 543.) An order was entered by agreement consolidating the records in cases numbered 48 MC 72144 and 48 MC 72142.

In the case of Yvonne Kafesjian, aged ten, No. 48 MC 72144, the information alleged that defendant "did feel and put his hands on the body of said Yvonne Kafesjian (10 years)."

In *People* v. *Weber*, 335 Ill. App. 215, where the same charges were made as here and identical allegations appeared in the complaint, we held that the information was fatally defective, for the reason that it did not allege on what part of the body defendant "put his hands," and thus failed to charge defendant with the commission of any act which would directly render the prosecuting witness delinquent. Under the authority of that decision, the judgment of the Municipal Court of Chicago in case numbered 48 MC 72144 is reversed.

In case number 48 MC 72142, Joanne Maier, aged ten, testified in substance that on the morning of September 1, 1948, she went to the home of defendant and found him dressed in shorts and undershirt; that he placed his arm around her and kissed her; that he took her hand and asked, "Do you want to see something?" and that he exposed certain parts of his body.

Raymond Gillette, a police officer, who arrested defendant on September 10, 1948, testified that defendant after being questioned admitted being dressed in his underwear when Joanne appeared at his home on the morning in question, and that he admitted her into his house, but denied the charge in the information. Testifying in his own behalf, defendant denied seeing Joanne on the morning of September 1, and asserted that he left for his place of employment about twenty minutes before the time Joanne testified she had arrived at his home.

The record shows that at the close of the evidence in the first case, involving Yvonne Kafesjian, defendant's counsel contended that the State failed to make out a case, and asked that the defendant be discharged. Thereupon the trial judge announced that "The court will reserve ruling until we hear from the other witinesses, the other complaining witness," and then proceeded to hear the testimony in the case of Joanne Maier.

At the close of the evidence in the case of Joanne Maier defendant's counsel made a motion to discharge the defendant in both cases. So far as the record shows, defendant did not object to proceeding with the hearing in the case involving Joanne Maier until the court announced its decision in both cases. The offenses charged are separate and distinct. The testimony in the Kafesjian case was irrelevant and inadmissible in the Maier case (see *People* v. *Reed*, 287 Ill. 606), and we think its admission irregular and prejudicial to the defendant. Defendant says that the request of the trial judge to hear the witnesses in the Maier case before ruling on the Kafesjian case shows that he entertained a reasonable doubt as to the guilt of the defendant. We are not unmindful of the presumption that the trial judge considered only the competent relevant evidence in each case before making his findings, but it would seem that if the evidence was sufficient to satisfy the trial judge of the defendant's guilt in the first case he would have made a ruling at the close of the proofs in that case.

Under the circumstances, in the interest of justice, we are impelled to reverse the judgment in the case of Joanne Maier, number 48 MC 72142, and remand the case for a new trial.

For the reasons given, the judgment of the Municipal Court of Chicago in case number 48 MC 72144 is reversed, and the judgment in case number 48 MC 72142 is reversed and the cause remanded for a new trial.

ONE CASE REVERSED AND ONE CASE REVERSED AND REMANDED FOR NEW TRIAL.

Kiley, P. J., concurs.
Feinberg, J., took no part.
(Certificate of Clerk).

APPENDIX III.

OPINION

Supreme Court of Illinois

UNITED STATES OF AMERICA

State of Illinois
Supreme Court } ss.

At a Term of the Supreme Court, *begun and held in Springfield, on Monday, the* 13th *day of* March *in the year of our Lord, one thousand nine hundred and* fifty, *within and for the State of Illinois.*

Present: Charles H. Thompson, Chief Justice
Justice Francis S. Wilson Justice Walter T. Gunn
Justice William J. Fulton Justice Jesse L. Simpson
Justice Joseph E. Daily Justice Albert M. Crampton

Ivan A. Elliott, Attorney General
Harry G. Newman, Marshal
Attest: Earle Benjamin Searcy, Clerk

Be It Remembered, *that afterwards, to-wit, on the* 22nd *day of* March, 1950 *the opinion of the Court was filed in said cause and entered of record in the words and figures following, to-wit:*

People State of Illinois,
Defendant in Error,
No. 31350 vs.
Louie Cosper,
Plaintiff in Error.

Error to
Municipal Court
City of Chicago

EARLE BENJAMIN SEARCY
CLERK OF SUPREME COURT
STATE OF ILLINOIS

Docket No. 31350—Agenda 6—January, 1950.
The People of the State of Illinois, Defendant in Error, v. Louie Cosper, Plaintiff in Error.

Mr. Justice Gunn delivered the opinion of the court:

Defendant, Louie Cosper, was convicted in the municipal court of Chicago on two separate informations charging him with contributing to the delinquency of female children, and in a trial before the court was found guilty of each charge. In each case he was sentenced to serve one year in the house of correction, the sentences to run concurrently. He prosecutes a writ of error directly to this court.

The offenses for which the defendant was convicted are misdemeanors, and hence no direct review lies in this court, because they are not punishable with imprisonment in the penitentiary. (Ill. Rev. Stat. 1949, chap. 38, pars. 585-586.)

He seeks to invoke the jurisdiction of this court because of constitutional grounds set out in his assignment of errors to this court. The defendant raised no constitutional question in the municipal court.

The errors raised in the trial court, on motion to quash and also by motions in arrest of judgment, involved the validity of the arrest of the defendant, the sufficiency of the information charging the crime, and that the court improperly allowed the People to amend one of the informations. No constitutional question was urged in the trial court. We have held a number of times that in order to raise a constitutional question, authorizing a direct appeal to this court, the question of the violation of the constitution must not only be raised in a proper procedural manner in the trial court, but must be passed upon and decided by that court. *Ryan* v. *City of Chicago,* 363 Ill. 607; *People ex rel. Rago* v. *Lipsky,* 390 Ill. 70; *People ex rel. Templeton* v. *Board of Education,* 399 Ill. 204.

The record in this case does not disclose that a constitutional question was raised or decided, and neither does it disclose any ground which gives us jurisdiction of a writ of error to review a conviction of a misdemeanor by the municipal court of Chicago.

The cause is transferred to the Appellate Court for the First District.

Cause transferred.

APPENDIX IV.

CHAP. 38, CRIMINAL CODE—ILL. Rev. Stat. 1953, Vol. 1, Sec. 100-103-104:

AN ACT to define and punish the crime of contributing to the dependency and neglect of children. (Approved June 23, 1915. L. 1915. p. 368.

100. Dependent or neglected child defined.) § 1.

"Be it enacted by the People of the State of Illinois, represented in the General Assembly: For the purposes of this Act a dependant and neglected child shall mean any male who while under the age of 17 years or any female who while under the age of 18 years, for any reason is destitute, homeless or abandoned; or dependant upon the public for support; or has not proper parental care or guardianship; or habitually begs or receives alms; or is found living in any house of ill fame or with any vicious or disreputable person; or has a home which by reason of neglect, cruelty or deprivaty on the part of its parents, guardian or any other person in whose care it may be is an unfit place for such child; and any child who while under the age of ten years is found begging, peddling or selling any articles or singing or playing any musical instrument for gain upon the street or gving any public entertainment or accompanies or is used in aid of any person so doing".

AN ACT to define and punish the crime of contributing to the delinquency of children. (Approved June 25, 1915. L. 1915, p. 369.)

"103. Delinquent child defined.) § 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly: That for the purposes of this Act a

delinquent child is any male who while under the age of seventeen (17) years, or any female who while under the age of eighteen (18) years violates any law of this state; or is incorrigible; or knowingly associates with thieves, vicious or immoral persons; or without just cause and without the consent of its parents; guardian or custodian absents itself from its home or place of abode, or is growing up in idleness or crime; or knowingly frequents a house of ill repute; or knowingly frequents any policy shop or place where any gambling device is operated; or frequents any saloon or dram-shop where intoxicating liquors are sold; or patronizes or visits any public pool room or bucket shop; or wanders about the streets in the night time without being on any lawful business or lawful occupation; or habitually wanders about any railroad yards or tracks or jumps or attempts to jump onto any moving train; or enters any car or engine without lawful authority; or uses vile, obscene, vulgar, profane or indecent language in any public place or about any school house; or is guilty of indecent or lascivious conduct.:

APPENDIX V.

CHAP. 38, CRIMINAL CODE—ILL. Rev. Stat. 1953, Vol. 1, Sec. 100-103-104:

AN ACT to define and punish the crime of contributing to the dependency and neglect of children. (Approved June 23, 1915. L. 1915. p. 368.

104. Penalty.) § 2. Any person who shall knowingly or willfully cause, aid or encourage any male under the age of seventeen (17) years or any female under the age of eighteen (18) to be or to become a delinquent child as defined in section one (1), or who shall knowingly or willfully do acts which directly tend to render any such child so delinquent and who, when able to do so, shall willfully neglect to do that which directly tend to prevent such state of delinquency shall be deemed guilty of the crime of contributing to the delinquency of children and on conviction thereof shall be punished by a fine of not more than two hundred (200) dollars, or by imprisonment in the county jail, house of correction or workhouse not more than one (1) year, or by both such fine and imprisonment".

APPENDIX VI.

Chap. 37, Sec. 382, Criminal Cases—prosecution, Par. 27, Ill Rev. Stat. 1953, Vol. 1, p. 1288.

"That all criminal cases in the Municipal Court in which the punishment is by fine or imprisonment otherwise than in the penitentiary, may be prosecuted by information of the Attorney General or State's Attorney, or some other person, and when an information is presented by any person other than the Attorney General or the State's Attorney, it shall be verified by affidavit of such person that the same is true, or that the same is true as he is informed and believes. Before an information is filed by any person other than the Attorney, General or State's Attorney one of the judges of the Municipal Court shall examine the information and may examine the person presenting the same and require other evidence and satisfy himself that there is probable cause for filing the same and so endorse the same. Every information shall set forth the offense with reasonable certainty, substantially as required in an indictment, and the proceedings thereon shall be the same, as near as may be, as upon indictment in the Criminal Court of Cook County, excepting as is by this act otherwise provided. But criminal cases in which the punishment is by fine only may, in the discretion of the court, be prosecuted by complainant as is provided by law for the prosecution of criminal cases before justices of the peace. Any person committed for a criminal or supposed criminal offense and not admitted to bail and not tried within four months after the date of arrest, shall be set at liberty by the

court, unless the delay shall happen on the application of the prisoner or unless the court is satisfied that due exertion has been made to procure the evidence on the part of the people and that there is reasonable grounds to believe that such evidence may be procured within the next sixty days, in which case the court may continue the case for such time as the court may deem necessary, not exceeding sixty days: Provided, however, that if said person be not tried within said sixty days no further continuance shall be granted and said person shall be set at liberty by the court. (As amended by Act approved June 3, 1907. L. 1907, p. 225. Adopted at election held September 17, 1907.)

APPENDIX VII.

Ill. Rev. Stat. A.D. 1953, Vol. I, Chap. 110, Sec. 199, Page 504.

"199. § 75. (JURISDICTION OF APPELLATE AND SUPREME COURTS.) (1) Appeals shall be taken directly to the Supreme Court in all cases in which a franchise or freehold or the validity of a statute or the validity of a county zoning ordinance or resolution or a construction of the constitution is involved, and in cases in which the validity of a municipal ordinance is involved and in which the trial judge shall certify that in his opinion the public interest so requires, and in all cases relating to revenue, or in which the State is interested as a party or otherwise.

(2) In all cases in which their jurisdiction is invoked pursuant to law, except those wherein appeals are specifically required by the constitution of the State to be allowed from the Appellate Courts to the Supreme Court, the judgments or decrees of the Appellate Courts shall be final, subject however, to the following exceptions: (a) In case, a majority of the judges of the Appellate Court or of any branch thereof shall be of the opinion that a case (regardless of the amount involved) decided by them involves a question of such importance, either on account of principal or collateral interests, as that it should be passed upon by the Supreme Court, they may in such case grant leave to appeal to the Supreme Court on petition of parties to the cause, in which case the said Appellate Court shall certify to the Supreme Court the grounds of granting said appeal. (b) In any such case as is hereinbefore made final in the said Appellate Courts it shall be competent for the Supreme Court to grant leave to appeal for its review and deter-

mination with the same power and authority in the case, and with like effect, as if it had been carried by appeal to the said Supreme Court. (c) In any case heard and determined in the trial court upon actual trial in which the Appellate Court upon appeal from the final judgment or decree entered in the cause in the trial court reverses said judgment or decree and remands the cause for a new trial or hearing, and in which the party in whose favor the trial court's judgment or decree was rendered shall present to and file with the Appellate Court an affidavit stating that he will be unable on a future trial or hearing to adduce other or additional evidence, facts or circumstances than were adduced in the trial court and expressly waiving the right to a new trial or hearing and consenting and requesting that the portion of the judgment of the Appellate Court remanding the cause for new trial or hearing be deleted and stricken from the judgment of the Appellate Court, then that court upon motion shall amend its judgment by striking out the portion thereof remanding the cause for new trial or hearing. Thereupon it shall be competent for the Supreme Court to grant leave to appeal from said final judgment of reversal for its review and determination with the same power and authority in the case, and with like effect, as in other cases in which leave to appeal from final judgments of the Appellate Courts is authorized in this section.

"Provided, however, that petitions for leave to appeal under subdivisions 2(b) and 2(c) of this section in actions *ex contractu* (exclusive of actions involving a penalty) and in all cases sounding in damages, shall not be entertained unless the judgment, exclusive of costs, shall be for fifteen hundred dollars ($1500.00) or more, or in cases in which the judgment is against the plaintiff and there is

issued by the Appellate Court, or by one of the judges thereof in vacation, a certificate to the effect that there is fairly involved in the claim of the plaintiff fifteen hundred dollars ($1500.00) or more. And provided also, that application under this Act 1 to the Supreme Court to cause it to grant leave to appeal for its review and determination shall be made within forty days after the judgment of the Appellate Court shall have become final, either through the denial of a petition for a rehearing or the expiration of the time within which a petition for rehearing might be filed, or the expiration of the time within which a notice of intention to file a petition for rehearing (when the filing of such notice is required by rule of the Appellate Court) might be filed; otherwise said power of the Supreme Court to review the judgment and decree of the Appellate Court shall cease to exist. Answers to such petitions for leave to appeal may be filed by respondent within fifteen (15) days after the expiration of the time for the filing of the petition for leave to appeal or within such further time as the Supreme Court or some Justice thereof in vacation may grant, if granted within said fifteen-day period. As amended by act approved July 12, 1949."

APPENDIX VIII.

"Chap. 38, Criminal Code, Ill. Rev. Stat. 1953, (Bar. Ed.) pp. 1450-1451.

657. Arrests without warrant.] § 4. An arrest may be made by an officer or by a private person without warrant, for a criminal offense committed or attempted in his presence, and by an officer, when a criminal offense has in fact been committed, and he has reasonable ground for believing that the person to be arrested has committed it.

"660. Persons arrested to be taken before a magistrate.] § 7. When an arrest is made without a warrant, either by an officer or a private person, the person arrested shall, without unnecessary delay, be taken before the nearest magistrate in the county, who will hear the case, for examination, and the prisoner shall be examined and dealt with as in cases of arrests upon warrant.

"662. Magistrates who may issue process for arrest, examination, etc.] § 1. For the apprehension of persons charged with offenses, except such as are cognizable exclusively by justices of the peace, any judge of a court of record, or any justice of the peace, is authorized to issue process to carry into effect the following provisions of this act. As amended by act approved June 21, 1933 L. 1933, p. 477. In force Jan. 1, 1934.

663. Complaint.] § 2. Upon complaint made to any such judge or justice of the peace that any such criminal offense has been committed, he shall examine on oath the complainant, and any witnesses produced by him, shall reduce the complaint to writing and cause it to be subscribed and sworn to by the complainant; which complaint shall contain a concise statement of the offense charged to have been committed, and the name of the person accused, and that the complainant has just and reasonable grounds to believe that such person committed the offense."

APPENDIX IX.

CONSTITUTION OF ILLINOIS 1870

BILL OF RIGHTS.

ARTICLE II. § 2. "No person shall be deprived of life, liberty or property, without due process of law."

§ 6. "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue without probable cause, supported by affidavit, particularly describing the place to be searched, and the persons or things to be seized."

§ 9. "In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation and to have a copy thereof, to meet the witnesses face to face, and to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed".

APPENDIX X.

ART. 4 — P. 11.

PERTINENT PART.

"§ 13. No act hereafter passed shall embrace more than one subject, and that shall be expressed in the title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed."

APPENDIX XI.

CONSTITUTION OF THE UNITED STATES ART. VI,—PERTINENT PART—SECS. 2 and 3.

This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

"The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a qualification to any Office or public Trust under the United States."

APPENDIX XII.

CONSTITUTION OF ILLINOIS

1870

ARTICLE VI, SEC. 33 (IN PART)

"All process shall run: *In the name of the People of the State of Illinois;* and all prosecutions shall be carried on: *In the name and by authority of the People of the State of Illinois;* and concludes: *Against the Peace and Dignity of the same.*

Office - Supreme Court
FILED
SEP 2 19
HAROLD B. WILLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1955.

No. [redacted] 293

LOUIS COSPER,

Petitioner,

vs.

STATE OF ILLINOIS,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

LATHAM CASTLE,
Attorney General of the State of Illinois,
Supreme Court Building,
Springfield, Illinois,
JOHN GUTKNECHT,
State's Attorney of Cook County,
Criminal Court Building,
Chicago, Illinois,
Attorneys for Respondent.

JOHN L. DAVIDSON, JR.,
First Assistant Attorney General,
FRED G. LEACH,
MURRAY F. MILNE,
Assistant Attorneys General,
Of Counsel.

THE DONNELLEY-WARREN PRINTING COMPANY, CHICAGO 26

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1955.

No. 273.

LOUIS COSPER,

Petitioner,

vs.

STATE OF ILLINOIS,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

OPINIONS BELOW.

The opinion of the Supreme Court of Illinois is reported *sub nomine People* v. *Cosper*, 5 Ill. 2d 97. The opinion of the Appellate Court of Illinois is reported *sub nomine People* v. *Cosper*, 2 Ill. App. 2d 168.

QUESTIONS PRESENTED.

The petition presents for determination by this court the following questions:

1. WHERE PETITIONER, REPRESENTED IN EVERY STAGE OF THE PROCEEDINGS BY COUNSEL, DOES NOT ASSERT IN THE TRIAL COURT DENIAL OF FEDERAL RIGHTS AND FOLLOWS A PRACTICE HELD BY THIS COURT AND BY THE STATE COURT TO WAIVE CONSTITUTIONAL QUESTIONS, MAY THIS COURT REVIEW THE ALLEGED DENIAL OF FEDERAL RIGHTS?

2. DOES A DECISION BY THE HIGHEST COURT OF A STATE ON A QUESTION OF STATE LAW ALLEGEDLY IN CONFLICT WITH OTHER DECISIONS OF THAT COURT CONSTITUTE A DENIAL OF DUE PROCESS UNDER THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION?

ARGUMENT.

I.

This Court Is Without Jurisdiction.

Petitioner in the courts below waived his right to have reviewed any alleged violations of Federally guaranteed rights. He was convicted of contributing to the delinquency of a minor in the Municipal Court of Chicago. (Abst. Illinois Supreme Court No. 33304, page 9.) Subsequently, his counsel filed motions for new trial and in arrest of judgment. (*Ibid*, pp. 9-12.) In neither motion did he raise any constitutional question. Thereafter he took an appeal to the Appellate Court of Illinois. (*Ibid*, pp. 75-78.)

This is not a cause wherein a defendant without counsel has been convicted in summary proceedings or sentenced following an unknowing waiver of rights. On the contrary, at all times in the extended proceedings, subsequent to his arrest he was represented by counsel who are not strangers to the bar of this court.

This court has repeatedly held that it is without power to decide whether rights guaranteed under the United States Constitution have been violated when a Federal question is not seasonably raised. (*Edelman* v. *California*, 344 U. S. 357.) Under Illinois practice the failure to raise constitutional questions in a motion for a new trial and in arrest of judgment waives the right to review of constitutional issues. (*People* v. *Cosper*, 405 Ill. 543; *People* v. *Reck*, 392 Ill. 311; *People* v. *Jankowski*, 391 Ill. 298.)

Further, by perfecting an appeal to the Appellate Court of Illinois rather than directly to the Supreme Court of Illinois, counsel waived petitioner's right to a review of constitutional questions. (*Parker* v. *Illinois*, 333 U. S. 571, 574.)

II.

No Constitutional Rights of Petitioner Were Violated.

It is difficult to ascertain the basis upon which petitioner asserts violation of his constitutional rights. A reasonable inference is that he seeks to reverse the conviction on the grounds that the courts of Illinois have not determined the law the way in which his counsel feels it should have been determined.

Assuming counsel are correct, that the Supreme Court of Illinois has erroneously determined the law of Illinois, such fact would not transmute mere error into a matter of substantial constitutional moment. (*In Re Converse*, 137 U. S. 624, 631.) In short, petitioner would have this court decree that a state tribunal is without jurisdiction to err. Even today, a state is free to determine purely local law in its own way, so long as it does not unlawfully discriminate against a class of citizens or a member of a class because he is within that class.

III.

The Decision Below Is Clearly Correct.

The contentions of the petitioner that the decision of the Supreme Court interpreting the law of Illinois was incorrect, are more then adequately met in the opinion of Mr. Justice Hershey which is printed at page 36 of petitioner's brief. (*People* v. *Cosper*, 5 Ill. 2d 97.)

CONCLUSION.

In view of the foregoing, it is submitted that this is not a case in which the court should issue its discretionary writ of certiorari.

Respectfully submitted,

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HAROLD B. WILLEY, Cl

IN THE

Supreme Court of the United States

No. 293

LOUIE COSPER,

Petitioner,

vs.

STATE OF ILLINOIS,

Respondent.

Petition for Rehearing

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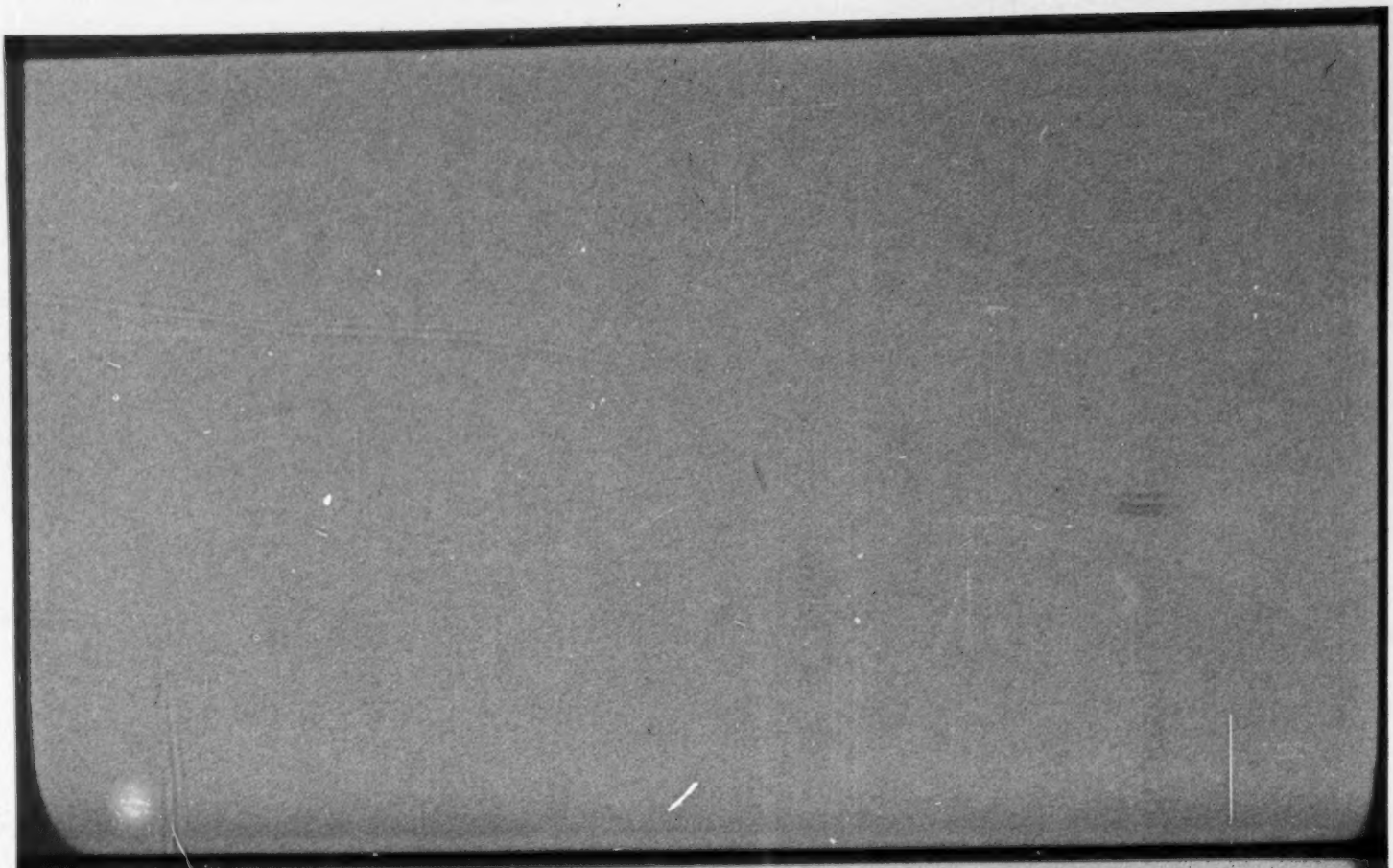

IN THE

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Petition for Rehearing

Comes now, Louie Cosper, the petitioner, by his respective counsel having prayed leave to be granted a Certiorari by this Honorable Court. The prayer for a review by certiorari being denied without comment, on the 10th day of October, 1955.

Petitioner now invoking Rule 58, Sec. 2, of the Rules of this Court, to reconsider a petition for rehearing on the points and authorities raised and submitted by your petitioner in his original application for Certiorari. In support of the petition for reconsideration, and a prayer for a rehearing on points and authorities, petitioner submits the following:

POINT I.

That this court in denying the application for certiorari without comment, violated its own rules, and is contrary to a long line of its own decisions, in that:

(a) The trial records Nos. 31350 and 33304, clearly disclosing that Federal Constitutional rights were timely and properly preserved of record, argued by counsel for the petitioner, heard and considered by the trial court, presented, challenged and urged in the reviewing courts of Illinois, and there ignored, overruled and denied, and presented to this court for a review, and being denied.

(b) That constitutional provisions, and vested rights under Illinois State Statutes being timely invoked and presented for a review, were ignored, excluded and denied to the petitioner.

(c) That the application for certiorari, properly, and timely raised jurisdictional questions, invoking Federal Constitutional rights, as ordained by the XIVth Amendment, which the State trial, and the reviewing courts ignored, excluded and disregarded for determination when timely and properly challenged in the Illinois State's reviewing courts.

(d) That the trial and reviewing courts of Illinois, deprived and denied to your petitioner statutory right of equal protection, notwithstanding the State law specifically providing such vested rights of equal protection when timely and properly invoked on "Due Process" grounds, and preserved in the record.

(e) That your petitioner notwithstanding, was actually and improperly obstructed, in all the State Court's proceedings, and now frustrated from making his appeal in a court of last resort upon these questions timely and properly presented to this court for a review, based on

fair play, "Due Process" and plain American justice, ordained under XIV Amendment.

POINT II.

To allow the order dismissing the petition for Rehearing to stand under the circumstances challenged, not only deprives the petitioner in this case of a review under "due process of law", but a denial of a fair day in the court of last resort.

Upon principle, the plainest consideration of justice impels that there be a reconsideration in this case on the order denying to petitioner a review on Certiorari, if for no other reason than that the petitioner in this case was given no opportunity to argue before this court for a judicial determination, the points and authorities on Federal Constitutional rights, and protection, denied to your petitioner under the provision of Illinois Statutes, controlling child delinquency, which denials have been throughout urged, preserved of record and made the sole grounds for the assignment of errors, when removed to this court of last resort by application for a writ for Certiorari, for a determination.

Even assuming that a State Reviewing Court has a right to interpret its own Constitution as it sees fit; but, by the same token, it has no right to disregard and exclude basic federal constitutional right, in a summary way, by *dicta* as appearing of record, when challenged in a reviewing court.

Elementary justice requires that the Reviewing Courts, Federal or State, give all the parties involved in the review, full opportunity to argue and present their views upon the issues assigned as error. Here not only were the errors of the trial court challenged, but timely and properly challenged from inception and throughout the proceedings as a denial of "Due Process of Law" and removed to this court, proclaiming protection under the XIVth Amendment.

POINT III.

The questions presented on the record for reconsideration.

1. Can the actions of a state trial court and the opinions of the reviewing court of last resort, by custom-made rules, deny to a citizen accused of the commission of a crime, the equal protection of the laws, within the purview of Sec. 1, of the XIVth Amendment to the Constitution of the United States?

2. Can the actions of a State reviewing court, by custom-made rule, deny and refuse to determine substantial federal and state constitutional rights properly and timely presented by its citizens in reviewing criminal causes, under Section 1, of the XIVth Amendment to the Constitution of the United States.

3. Can the judges of any State Reviewing Court, in any manner limit or in any way affect the binding force of the plain intendment of Sections 2 and 3 of the Sixth Article of the Constitution of the United States, without violating their own oaths under Sections 2 and 3, of the Sixth Article of the Constitution of the United States?

4. Can a state legislature, under the tripartite division of government, by the enactment of legislation (Chap. 110, Sec. 199, pp. 511-512, Ill. Rev. Stats. A. D. 1953).

(a) Deprive and deny to the judges of an Illinois Appellate Court by their own sworn duty under Art. VI to support the United States Constitution to pass upon and determine federal and state constitutional questions?

(b) Can a State reviewing court confer and confine by limitation that right by legislative enactment upon only judges of the Supreme Court of a State, and all *nisi prius* judges of the State, but restraining Appellate court judges?

(c) Can a State Court of last resort indirectly avoid to determine, federal and state constitutional rights of its citizens, properly and timely presented for review, where the constitutions, federal and state, by mandate commands the reviewing court to follow and obey that right directly?

5. Can the judges of a state supreme court, but custom-made rule and judicial decree, confer the right on the judges of the appellate courts to waive all appellant's constitutional questions in a criminal cause assigned as error to the court below in the face of the XIVth Amendment?

The record is clear that your petitioner's application merits claim in this court under the "Due Process Clause" of the XIVth Amendment upon the basic questions and the errors timely assigned thereon to the trial and reviewing court of Illinois, presented prior to taking of an appeal to this court. The order of this court thereupon denying the Writ of Certiorari seems all the more incomprehensible in view of no showing of Appellee's intention to make a reply to the following questions presented under Points III and IV, which petitioner implores this court to reconsider on the petition here praying for rehearing, and consideration.

6. By what constitutional authority or interpretation can a state legislature deprive judges of a state appellate court, of the duty and power to implement the individual oaths of judges of the Appellate Court, specified in Article VI of the federal constitution, and this practice be sanctioned by custom made rules wrongfully and arbitrarily adopted by the supreme court of a state?

POINT IV.

The questions here presented for review and reconsideration.

(a) Where the State Court has decided a Federal question of substance, not heretofore determined by this Honorable Court, or has decided it in a way probably not in accord with the applicable decisions of this Honorable Court.

(b) Where a state court of appeals has rendered a decision in conflict with the decisions of another state court of appeals on the same subject matter.

(c) Where the state court of appeals has decided an important state question in a way in conflict with the applicable decisions, and the State's law.

(d) Where the state court of appeals has decided an important question of federal constitutional, right under the XIVth Amendment which has not been, but should be settled by this Honorable Court.

(e) Where the state court of appeals has decided a federal question in a way in conflict with applicable decisions of this Honorable Court.

(f) Where the state court of appeals has so far departed from the accepted and usual course of judicial proceedings or so far sanctioned such a departure by a lower state court as to call for an exercise of this Honorable Court's power of supervision.

POINT V.

The petitioner respectfully submits, and believing he has reliably complied with the rules of this court by marking and presenting questions to be considered by this court, listing their relative importance to all citizens of Illinois. While these questions indicated a compelling interest in the future to all citizens of Illinois in trial and appellate court

procedure. There is a strong secondary question of equal importance. That the petitioner was singled out, and by discriminatory trial and appellate procedure denied equal protection of the Illinois law governing child delinquency, cited as the controlling decisions by the Illinois Supreme Court.

The plainest consideration of justice implores this court in that case, if for no other reason to grant a review and rehearing on the practice now followed in Illinois Trial and Reviewing Courts. Failure to do so by this court does now sanction all the Illinois Courts a right to continue and ignore Federal Constitutional protection to its citizens. Such impression should be condemned, as violating the XIVth Amendment.

To allow the order denying the Certiorari to stand under these circumstances, not only deprives the petitioner in this case of a fair day in this court but established a precedent, that the state court of Illinois may now have free-wheeling in the light of the present order denying the petition for Certiorari, thereby overthrowing or striking down all claims of federal constitutional right to its citizens under the XIVth Amendment and overthrowing *stare decises* opinions long established by this court.

CONCLUSION

In conclusion it may be stated that the petitioner as appellant, has shown of record that he was convicted as the result of an illegal arrest. That the court was without jurisdiction beginning with the challenge to the arrest, and therefore the judgment of the court as the first step should not be enforced.

That the appellant has shown that he has preserved of record beginning with the first step a violation of a certain definite statute of Illinois governing child delinquency

which the trial and reviewing courts ignored disregarded and excluded from all consideration.

That the appellant has shown in removing his cause to the Appellate Court of Illinois, that he expressly reserved his rights and privileges as guaranteed to him under the XIVth Amendment. That the Appellate Court upon request to remove the cause to the Supreme Court of Illinois on the grounds of Federal constitutional violations refused and ignored the request and in their opinion published, contended that the appellant by appealing to the Appellate Court of Illinois, First Division, waived all his constitutional rights, federal and state.

That the Appellant has shown, that he has been singled out and dealt different with from that class of citizens of Illinois, falling within the prescription of the Statute defining the crime of delinquency to minor children. That he has been singled out and dealt different with the opinions published by the Illinois Supreme Court of Iliinois defining child delinquency.

Under the doctrine long established by this court, that "Due Process" implies that the rights of life, liberty and property of each individual shall be determined by general rules which shall apply to all who have similar rights or are similarly situated with reference thereto. It negatives any form of procedure which arbitrarily singles out an individual or class of individuals and permits them to be dealt with respecting these fundamental rights in a manner arbitrarily and unreasonably different from that in which others similarly situated are dealt with.

In *United States* v. *Reese,* 92 U.S. 214 where the Court in dealing with this question of similar import, gives expression on this point in the following language:

> "It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders and leave it for the Courts to step inside and

say who would be rightfully detained and who should be set at large.

"This would to some extent substitute the judicial for the legislative department of the government."

Therefore, your petitioner prays, that this court reconsider on this petition for a rehearing on the jurisdictional questions presented to it by the application for a petition for certiorari, with a declaration of the law pertaining thereto.

That your petitioners praying protection from further jeopardy under the present order denying relief, further implores this court for a reconsideration and for a determination as to the legality of the proceeding in the reviewing courts of Illinois, now existant, denying to your petitioners relief under "Due Process" timely and properly invoked. That this court reconsider the points and authorities cited and submitted by the petitioner in his application and petition praying for the issuance of the Writ of Certiorari and in the light of the argument advanced grant to your petitioner the application for a Writ of Certiorari and his day in this court of last resort.

Respectfully submitted,

HERBERT M. WETZEL
ARTHUR FRANKEL
DEMETRI M. SPIRO
Attorneys for the Petitioner.

CERTIFICATE

I do hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

HERBERT M. WETZEL